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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

Pro Se

No. 07-1406-RSM

JAMES CORNELL PARKS,

MOTION TO DISMISS

Plaintiff(s),

Hearing Date: December 14, 2007

v.

TULALIP RESORT CASINO, an entity of the

Tulalip Tribes

Defendants(s)

I. Relief Requested

Defendant TULALIP RESORT CASINO, by and through undersigned counsel, hereby moves the Court, pursuant to the provisions of Fed.R.Civ.P. 12(b)(1) and (6), and Fed.R.Civ.P 56 for dismissal of the above-entitled action on the grounds that this Court lacks jurisdiction over the subject matter and failure to state upon which relief can be granted.

The Tulalip Tribes, d/b/a, the Tulalip Gaming Organization (herein after "TGO"), has not waived its sovereign immunity, nor has the Plaintiff stated any facts in his complaint or provided any evidence showing the TGO has waived its immunity from suit.

1 Plaintiff relies for his assertion of jurisdiction exclusively upon Title VII of the Civil Rights
2 Act of 1964. Title VII excludes “Indian tribes” from the scope of its coverage. The Federal
3 Rules of Civil Procedure require a Court to dismiss an action whenever it appears by suggestion
4 of the parties or otherwise that the Court lacks jurisdiction over the subject matter. FED.R.CIV.P.
5 12(h)(3). Because Defendant meets the definition of “Indian tribe” under Title VII, Defendant is
6 exempt from requirements of these statutes, and the Court is left without jurisdiction and should
7 dismiss the Complaint.
8

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10 Further, Plaintiff has failed to exhaust the federal and tribal administrative remedies available
11 to him. Timely filings of allegations arising under Title VII require a the charging party to file a
12 charge with the Equal Employment Opportunity Commission (“EEOC”) within 180 days of the
13 alleged discriminatory employment practice and the party must bring a civil action within 90
14 days of issuance of the right-to-sue letter. 42 U.S.C. § 2000e-5(e)(1); *Phillips v. General*
15 *Dynamics Corp.*, 811 F. Supp 788, 794 (N.D. N.Y. 1993). To date, there has been no notice by
16 the EEOC of a charge against the Tulalip Resort Casino, nor has the plaintiff provided the
17 Tulalip Resort Casino or the Court a “right-to-sue” letter. Additionally, as an employee of the
18 TGO, the Plaintiff possesses the right to file a grievance with the TGO regarding employment
19 issues. However, as of the date of the filing of the Complaint in this matter, he has not filed a
20 grievance. Because the Plaintiff has not exhausted the administrative remedies available to him,
21 the case must be dismissed.
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25 Finally, Plaintiff has failed to exhaust his tribal court remedies. It is a well-settled principle
26 of law that federal courts should not ordinarily intervene until tribal appellate review is complete.
27 Federal courts have held that tribal courts should have the ability to determine whether they have
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1 jurisdiction over a claim involving the Tribes, arising on tribal land and implicating a tribal
2 enterprise. Therefore, the case must be dismissed unless and until tribal court remedies are
3 exhausted.
4

5 II. INTRODUCTION

6
7 Plaintiff PARKS sued Defendant the TULALIP TRIBES, doing business as,
8 TULALIP GAMING ORGANIZATION, a Tulalip tribal organization which is composed of
9 three gaming facilities, including the TULALIP RESORT CASINO. Plaintiff's complaint
10 alleges claims of discrimination and harassment against himself by the Defendant. His basis for
11 jurisdiction rests solely upon Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000-e
12 (2007). For the Court to render an enforceable decision against the Tribes, two criteria must be
13 met. First, there must be some statutory basis for the assertion of the court's jurisdiction, and
14 second, the Tribes must have waived its sovereign immunity. Those criteria have not been met
15 in this matter. Therefore, the Tulalip Tribes is moving to dismiss the Complaint for lack of
16 waiver of sovereign immunity, lack of subject matter jurisdiction and failure to state a claim
17 upon which relief can be granted pursuant to Rule 12(b)(1) and (6) of the Federal Rules of Civil
18 Procedure.
19

20 III. STATEMENT OF FACTS

- 21 1. The Tulalip Tribes is a federally recognized Indian tribal government, 72 FR 13647
22 (March 22, 2007), organized with approved constitution and bylaws under Section 16
23 of the Indian Reorganization Act (25 U.S.C. § 476 *et seq.*).
24
- 25 2. The Tulalip Tribes is governed by an elected Board of Directors pursuant to the
26 Tulalip Tribes Constitution Article III. The Board of Directors is authorized by the
27
28

1 Constitution to adopt ordinances and resolutions governing activities on the
2 reservation.¹

3 3. The Tulalip Gaming Organization (“TGO”) is an entity of the Tulalip Tribes created
4 by Tulalip Gaming Ordinance No. 55. The TGO is composed of three gaming
5 facilities, including the Tulalip Resort Casino.²

6
7 4. The TGO is located on trust land within the exterior boundaries of the Tulalip Indian
8 Reservation. Pursuant to Fed.R.Evid. 201, the TGO requests that the Court take
9 judicial notice of this fact. (Sheldon Aff. at ¶ IV; Lacy Aff. at ¶ IV).

10
11 5. The TGO conducts all of its business within the boundaries of the Tulalip Indian
12 Reservation on tribal trust land where the Plaintiff alleges the events giving rise to
13 this claim occurred. (Sheldon Aff. at ¶ V; Kettler Aff. at ¶ IV).

14
15 6. Plaintiff is an employee of the Tulalip Gaming Organization. (Complaint
16 (“Compl.”)).

17
18 7. Formal grievance procedures are available to employees of the TGO, however, no
19 formal grievance was filed by the Plaintiff in regard to this matter. (Kettler Aff. at ¶
20 X).

21
22 8. The TGO has not received a notice from the EEOC stating a charge has been filed
23 with the EEOC. Nor has the Plaintiff provided to the TGO a “right-to-sue” letter.
(Kettler Aff. at ¶ XI).

24
25 9. The TGO has not received a notice from the Human Rights Commission stating a
26 complaint has been filed with their agency. (Kettler Aff. at ¶ XII).

27 ¹ *Affidavit of Melvin Sheldon, Jr., Chairman of the Board of Directors of the Tulalip Tribes d/b/a Tulalip Gaming*
28 *Organization* ¶ (November 2, 2007) (“Sheldon Aff.”); *Affidavit of Shelly Lacy, General Manager, the Tulalip Tribes*
d/b/a Tulalip Gaming Organization ¶ II (November 2, 2007) (“Lacy Aff.”);

² *Affidavit of Kenneth Kettler, President, the Tulalip Tribes d/b/a Tulalip Gaming Organization* ¶ IV (November 2,
2007) (“Kettler Aff.”);

1 10. The TGO has not waived its right of sovereign immunity with respect to Title VII
2 claims. (Sheldon Aff. at ¶ IV; Lacy Aff. at ¶ VI; Kettler Aff. at ¶ III).

3 11. On September 11, 2007, Plaintiff filed the above-captioned action. In his Complaint,
4 Plaintiff alleges that he was the subject of racial discrimination and harassment which
5 created a hostile work environment. (Compl. 2-3).
6

7 8 **IV. ARGUMENT**

9 **A. The Tulalip Tribes and its entities, is a federally recognized tribe, possessing** 10 **sovereign immunity from suit.**

11 1. NEITHER THE TRIBES NOR CONGRESS HAVE WAIVED SOVEREIGN IMMUNITY IN 12 FAVOR OF THE PLAINTIFF IN THIS CASE.

13 The Tulalip Tribes (“Tribes”) is a federally recognized tribe enjoying sovereign
14 immunity from suit. 72 FED.REG. 13647 (March 22, 2007) (listing the Tulalip Tribes among the
15 federally recognized tribes); *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 55, 98 S. Ct. 1670; 56
16 L. Ed. 2d 106 (1978). In adopting the Tulalip Tribes Law and Ordinance No. 49, the Tulalip
17 Tribes Board of Directors were careful to emphasize that the sovereign immunity of the Tribes
18 may only be waived in the following ways:

19 The Tulalip Tribes ... its agencies, enterprises ... or entities of any kind ...
20 shall be immune from suit; except where the immunity of the Tribes ... is
21 expressly, specifically and unequivocally waived by and in a Tulalip tribal
22 or federal statute, a duly executed contract approved by the Tulalip Board
of Directors, or a duly enacted ordinance or resolution of the Tulalip Board
of Directors.

23 T.T.O. 49 § 1.2.2.

24 The doctrine of sovereign immunity is “firmly ensconced” in the law of the United
25 States. *Allen v. Gold Country Casino*, 464 F.3d 1044, 1046 (9th Cir. 2006). Indian tribes have
26 long been recognized as possessing sovereign immunity from suit, absent a clear waiver by the
27 tribe or congressional abrogation. *North Sea Prods. v. Clipper Seafoods*, 92 Wn. 2d 236, 238,
28 595 P.2d 938 (1979) quoting *Santa Clara Pueblo*, 463 U.S. at 58 (citations omitted); *Quileute
Indian Tribe v. Babbitt*, 18 F.3d 1456, 1459 (9th Cir. 1994); *Snow v. Quinault*, 709 F.2d 1319

1 (9th Cir. 1983). Immunity is a shield that may be invoked in a given situation, to protect the
2 party from having to defend itself further in the forum. Immunity may also be waived by the
3 party, however, such a waiver cannot be implied, it must be clear and explicit. *See Allen*, 464
4 F.3d at 1047 (statement in an employee handbook regarding equal employment opportunities is
5 not a “clear” waiver of sovereign immunity); *Santa Clara Pueblo*, 436 U.S. at 48 (explaining that
6 a waiver of immunity “must be unequivocally expressed”). This immunity extends to all the
7 activities of the tribe. *Id. Citing Kiowa Tribes v. Mfg. Techs., Inc.*, 523 U.S. 751, 757-760, 118
8 S. Ct. 1700, 140 L. Ed. 2d 981 (1998); *Am. Vantage Cos. V. Table Mountain Rancheria*, 292
9 F.3d 1091, 1100, 2002 Cal. Daily Op. Service 5272 (9th Cir. 2002).

10 While Congress may waive the Tribes sovereign immunity, such waiver must be explicit
11 in the language of the legislation. *Oklahoma Tax Comm’n. v. Citizen Band Potawatomi Indian*
12 *Tribe of Oklahoma.*, 498 U.S. 505, 510, 111 S. Ct. 905, 112 L. Ed. 2d 1112 (1991) (“Congress
13 has always been at liberty to disperse with such tribal immunity or to limit it.”). “In order to
14 avoid sovereign immunity, plaintiffs must show that the Tribe either waived it or Congress
15 abrogated it.” *Hartman v. Golden Eagle Casino*, 243 F. Supp. 2d 1200, 1204, 91 Fair Empl.
16 Prac. Cas. (BNA) 92 (D. Kan. 2003) (dismissing the case for lack of subject matter jurisdiction).

17 In this matter, the Tulalip Tribes and its entities have not waived their right of sovereign
18 immunity (Sheldon Aff. at ¶), nor has Congress waived the Tulalip Tribes sovereign immunity in
19 suits brought under Title VII of the Civil Rights Act.

20 2. THE TULALIP GAMING ORGANIZATION IS TRIBAL AGENCY ORGANIZED AND
21 CONTROLLED UNDER TRIBAL LAW AS AN ARM OF THE TRIBAL
22 GOVERNMENT.

23 The Tulalip Tribes is organized under Section 16 of the Indian Reorganization Act, 25
24 U.S.C. § 476, with a federally approved Constitution and Bylaws. The Tulalip Tribes adopted a
25 Tribal Gaming Ordinance No. 55 (“T.T.O. 55”) pursuant to Indian Gaming Regulatory Act
26 (“IGRA”), 25 U.S.C. §§ 2701 *et. seq.* This tribal gaming ordinance establishes the Tulalip
27 Gaming Organization (“TGO”) as government agency of the Tribes. The purpose of the
28 development of the TGO (which includes the Tulalip Resort Casino), is to generate the revenue
needed to promote Tulalip tribal self-sufficiency, economic development, employment, job

1 training, a strong Tulalip Tribal government, and to fund and provide essential social programs
2 and services for tribal members. T.T.O. § 55.1 (2005). The proceeds generated by the TGO go
3 directly to the provision of services for the Tribes and its members as outlined in a Revenue
4 Allocation Plan approved by the Secretary of the United States Department of the Interior.
5 (Sheldon Aff. at ¶ VI).

6 As the creator of the Tulalip Gaming Organization, the Tulalip Tribes' governing body,
7 the Board of Directors, are directly involved in the day-to-day management of TGO. For
8 example, all contracts obligating the TGO for over one hundred thousand dollars must be signed
9 by the Chairman of the Board of Directors after the Board of Directors passes a motion
10 authorizing him to sign. (Sheldon Aff. at ¶ VII). This motion must occur at a regular meeting of
11 the Board of Directors as mandated by the Tulalip Tribes' Constitution and Bylaws. Because the
12 gaming activities of the Tulalip Tribes are governmental activities, as set out in the IGRA and
13 Tulalip Tribal Ordinance No. 55, the sovereign immunity of the Tribes extends to the TGO as an
14 arm of the tribal government. The TGO has not waived its sovereign immunity from suit,
15 therefore the Plaintiff's claims must be dismissed.

16 **B. The Tulalip Tribes is exempt from the requirements of Title VII of the Civil**
17 **Rights Act.**

18 Even if the Tribes (and thus the TGO) had waived its sovereign immunity, which it has
19 not, courts have consistently held that Indian tribes and their entities are exempt from the
20 application of Title VII. The only basis for federal jurisdiction asserted by the Plaintiff is federal
21 jurisdiction under Title VII of the Civil Rights Act of 1964. 42 U.S.C. § 2000-e (2007). "Title
22 VII's express exemption of Indian Tribes from employer status eschews subject matter
23 jurisdiction of the federal courts to hear employment discrimination complaints ... when brought
24 against unincorporated commercial enterprises entirely owned and operated by recognized Indian
25 tribes." *Thomas v. Choctaw Management/Services Enterprise*, 313 F.3d 910, 911, 90 Fair Empl.
26 Prac. Cas. (BNA) 844 (5th Cir. 2002). See also *Dille v. Council of Energy Resource Tribes*, 801
27 F.2d 373, 374, 41 Fair Empl. Prac. Cas. (BNA) 1345 (10th Cir. 1986). ("Clearly this language
28 exempts a single Indian tribe from the definition of 'employer' and therefore from the legal

1 requirements of Title VII.”³; *Morton v. Mancari*, 417 U.S. 535, 545 n. 19, 94 S. Ct. 2474, 41 L.
 2 Ed. 2d 290 (1974) (noting that Title VII “excludes an ‘Indian Tribe’ from the Act’s definition of
 3 ‘employer.’”); *In re Prairie Island Dakota Sioux*, 21 F.3d 302, 304, 64 Fair Empl. Prac. Cas.
 4 (BNA) 701 (8th Cir. 1994) (noting an “Indian tribe may not be sued under Title VII”).

5 It is a well-settled principle of statutory construction that statutes passed for the benefit of
 6 Indian tribes are to be liberally construed, with doubtful expressions resolved in favor of the
 7 tribe. *Three Affiliated Tribes of the Fort Berthold Reservation v. World Engineering, P.C.*, 467
 8 U.S. 138, 104 S. Ct. 2267, 2275, 81 L.Ed.2d 113 (1984). Title VII prohibits employers from
 9 engaging in discriminatory practices. Congress, however, expressly exempted “Indian tribe(s)”
 10 from the scope of the definition of “employer” as used in the Title VII. The legislative history
 11 of the tribal exemption from Title VII indicates that the purpose of the exemption was so that
 12 tribes could control their own economic enterprises. 110 Cong. Rec. 13702 (1964); *see also*
 13 *Dille*, 801 F.2d 373.

14 This exemption has been held in the Ninth Circuit to include all types of tribal entities,
 15 including gaming enterprises such as the TGO. *Allen v. Gold Country Casino*, 464 F.3d 1044,
 16 88 Empl. Prac. Dec. (CCH) P42, 565 (9th Cir. 2006) (dismissing Allen’s Title VII claims against
 17 the GCC because as an arm of the Tribe, it enjoys the Tribe’s sovereign immunity); *Pink v.*
 18 *Modoc Indian Health Project*, 157 F.3d 1185, 74 Empl. Prac. Dec. (CCH) P45, 594 (9th Cir.
 19 1998) (concluding Pink could not bring suit against Modoc under Title VII because Modoc was
 20 an “Indian tribe” and therefore exempted from the application of the statute). *See also Ferguson*
 21 *v. SMSC Gaming Enterprise*, 475 F. Supp. 2d 929 (D. Minn. 2007) (holding the court had no
 22 jurisdiction because Title VII does not apply to a tribal gaming entity); *Choctaw*
 23 *Management/Services Enterprise*, 313 F.3 at 911 (holding the CM/SE is a direct proprietary
 24

25 ³ “The term “employer” means a person engaged in an industry affecting commerce who has
 26 fifteen or more employees for each working day in each of twenty or more calendar weeks in the
 27 current or preceding calendar year, and any agent of such person, but such term does not include
 28 (1) the United States, a corporation wholly owned by the government of the United States, an
 Indian tribe, or any department of agency of the District of Columbia subject by statute to
 procedures of competitive service...” 42 U.S.C. § 2000-e(b) (emphasis added).

1 enterprise of the Choctaw Nation and is legally inseparable from the Nation and dismissing the
2 plaintiffs Title VII claims); *Hartman v. Golden Eagle Casino*, 243 F. Supp. 2d 1200, 1203, 91
3 Fair Empl. Prac. Cas. (BNA) 92 (D.Ct. Kan. 2003) (dismissing Title VII claims because Tribe
4 and GEC enjoys sovereign immunity from suit and the court then lacks subject matter
5 jurisdiction). As an arm of the tribal government, the activities of the TGO are thus the properly
6 deemed to be those of the Tribes. *Allen*, 464 F.3d at 1046.

7 Federal Rules of Civil Procedure require dismissal of the action “[w]hensoever it appears
8 by suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter.”
9 FED.R.CIV.P. 12(h)(3). The TGO, as a branch of the Tribal government, shares the Tribes
10 exemption from Title VII. A party may not avoid Title VII’s express exemption of tribal
11 employers by bringing suit against another branch of the tribal government, such as the TGO.
12 When a court lacks jurisdiction, a party is substantially harmed when it is forced to defend itself
13 in that forum. Substantial justice is not done when a party is forced to defend itself in a forum
14 which lacks jurisdiction, such a proceeding wastes the resources of the Court, jury, and the
15 parties.

16 **C. The case must be dismissed because the Plaintiff has not exhausted the**
17 **federal or tribal administrative remedies required by Title VII before filing a**
18 **lawsuit.**

19 It is a well-settled principle of law that a party must exhaust administrative remedies
20 before a federal court should consider the matter. *Nat’l Farmers Union Ins. Cos. v. Crow Tribe*
21 *of Indians*, 471 U.S. 845, 857, 105 S.Ct. 2447 (1985). The Plaintiff had two separate
22 administrative remedies available to him before filing a lawsuit. He could have filed a grievance
23 under the TGO’s employee grievance process, but did not. Likewise, he could have filed a
24 charge with the Equal Employment Opportunities Commission, however, in spite of the
25 statement in his complaint that he had exhausted his administrative remedies with the EEOC and
26 Human Rights Commission, the TGO has not received a notice from either agency that a
27 complaint had been filed. (Kettler Aff. at ¶ XI-XII).
28

1 administrative procedures provided). Further, both Congress and the courts have agreed that
2 exhaustion of administrative remedies, particularly when a claim is asserted against an Indian
3 tribe, is required as a matter of self-determination and self-governance before a federal court
4 should assert jurisdiction over the matter.
5

6 2. THE PLAINTIFF FAILED TO FILE A CHARGE WITH THE EQUAL EMPLOYMENT
7 OPPORTUNITY COMMISSION.

8 Title VII of the Civil Rights Act establishes an administrative procedure that a
9 complaining employee must follow before filing a lawsuit in federal court. 42 U.S.C. § 2000-
10 e(5)(1); *Alexander v. Gardener-Denver*, 415 U.S. 36, 47, 39 L. Ed. 2d 147, 945 S. Ct. 1011
11 (1974). This exhaustion of federal administrative remedies is “central to Title VII’s statutory
12 scheme because it provides the EEOC the first opportunity to investigate discriminatory practices
13 and enables it to perform its roles of obtaining voluntary compliance and providing conciliatory
14 efforts.” *Williams v. Little Rock Municipal Water Works*, 21 F.3d 218, 222, 64 Fair Empl. Prac.
15 Cas. (BNA) 622 (8th Cir. 1994), *citing Patterson v. McLean Credit Union*, 491 U.S. 164, 180-
16 181, 105 L. Ed. 2d 132, 109 S. Ct. 2363 (1989). Under the Title VII, certain jurisdictional
17 prerequisites must be met before a court may assert jurisdiction over a claim. *Evans v. MAAX-*
18 *KSD*, 2006 U.S. Dist. LEXIS 87142 (E.D. Penn. Nov, 29, 2006), 9; *citing Ostapowicz v. Johnson*
19 *Bronze Co.*, 541 F.2d 394, 398 (3d. Cir. 1976); *Buck v. Hampton Township School Dist.*, 452
20 F.3d 256, 260 (3d Cir. 2006). First, a plaintiff must file a charge with the EEOC within 180 days
21 after the alleged incident; and second, the plaintiff must receive a notice of right to sue from the
22 EEOC. *Phillips*, 811 F. Supp. At 794; *Evans*, 2006 U.S. Dist. LEXIS 87142 at 8; *Williams*, 21
23 F.3d at 222. Only after a Plaintiff has successfully demonstrated to the Court that he or she has
24 met those requirements should a Court assert jurisdiction over the matter.
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1 As of the date of the filing of his complaint, the Plaintiff has not notified the TGO of a
2 charge filed with the EEOC, nor has the Plaintiff presented the TGO or the Court with a notice of
3 right to sue from the EEOC. (Kettler Aff. at ¶ XI). Even if the TGO had waived its sovereign
4 immunity or was not explicitly exempted from the Act, the Court must dismiss the Plaintiff's
5 claims for failure to meet the prerequisites of Title VII before filing a claim in federal court. *See*
6 *Iowa Mut. Ins. Co. v. LaPlante*, 480 U.S. 9, 15-16, 107 S.Ct. 971, 94 L.Ed.2d 10 (1987).
7

8 **D. Plaintiff has not exhausted his tribal court remedies.**

9 Generally, a party may not sue in federal courts tribal court remedies have been
10 exhausted. *Iowa Mut. Ins. Co.*, 480 U.S. at 16. "Regardless of the basis for jurisdiction, the
11 federal policy supporting tribal self-government directs a federal court to stay its hand in order to
12 give the tribal court a 'full opportunity to determine its own jurisdiction'." *Id.* 480 U.S. at 16;
13 citing *National Farmers Union Ins. Cos. v. Crow Tribe*, 471 U.S. 845, 857 (1985). Promotion of
14 tribal self-government and self-determination require that the Tribal Court have the first
15 opportunity to evaluate the factual and legal bases for the challenge its jurisdiction. *Iowa Mut.*
16 *Ins. Co.*, 480 U.S. at 15-16. Additionally, "the orderly administration of justice in federal court
17 will be served by allowing a full record to be developed in Tribal Court before either of the
18 merits of any question of appropriate relief is addressed." *National Farmers Union Ins. Cos.*, 471
19 U.S. at 856. Exhaustion is required before a federal court should review the matter even when
20 there is no ongoing proceeding in tribal courts. *Middlemist v. Secretary of the U.S. Dept. of*
21 *Interior*, 824 F.Supp 940, 943-944 (D.C. Dist. Mon. 1993). "Exhaustion of tribal court remedies
22 ... will encourage tribal courts to explain to the parties the precise basis for accepting jurisdiction
23 and will also provide other courts with the benefit of their expertise in such matters in the event
24 of further judicial review." *Id.* 471 U.S. at 857; *Elliott v. White Mountain Apache Tribal Court*,
25 2006 U.S. Dist. LEXIS 88839 (D.C. Dist. Ariz. 2006) ("... [A]t the very least, the Tribal
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1 appellate courts must be given the opportunity to entertain the merits of the jurisdiction issue
2 before bringing any claim in federal court.”). Finally, as the U.S. Supreme Court stated in
3 *National Farmers Union Ins. Cos.*, “until petitioners have exhausted the remedies available to
4 them in the Tribal Court system, it would be premature for a federal court to consider any relief.”
5 *Id.* 471 U.S. at 857.
6

7 8 V. CONCLUSION

9
10 As a sovereign Indian nation, the Tribes and its entities possess the right of sovereign
11 immunity from suit. This immunity must be explicitly waived by either the tribe or Congress in
12 order for a Court to obtain jurisdiction over the Tribes. Without this waiver, a Court does not
13 have subject matter jurisdiction to review the Plaintiff’s claims. In this matter, the Tribes has not
14 waived the sovereign immunity of the TGO. Further, Title VII of the Civil Rights Act explicitly
15 exempts Indian tribes from the definition of “employer.” Even if the Tribes had waived its
16 sovereign immunity from suit in these matters, a Court would have no subject matter jurisdiction
17 over the claim.
18

19
20 If these reasons are not sufficient to permit the Court to dismiss this action, the Plaintiff
21 filed this lawsuit before exhausting any of the tribal administrative remedies available to him as a
22 TGO employee nor did he file a claim with the EEOC. Finally, he did not file the claim in
23 Tulalip Tribal Court so that the Tulalip Tribal Court could determine if it possessed jurisdiction
24 to review the Plaintiff’s claims. For these reasons and pursuant to the provisions of Fed.R.Civ.P.
25 12(b)(1) and (6), and Fed.R.Civ.P. 56, Defendant moves for dismissal of the above-entitled
26 action on the grounds that this Court lacks jurisdiction over the subject matter and failure to state
27 upon which relief can be granted.
28

1 THE TULALIP TRIBES

2 /s/ Lael Echo-Hawk

3 Lael Echo-Hawk

4 WSBA# 34525

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5 Office of the Reservation Attorney

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12 CERTIFICATE OF SERVICE

13 I hereby certify that on Thursday, the 14th day of November, 2007, I electronically filed the
14 foregoing "Notice of Appearance" with the Clerk of Court, using the CM/ECF system which will
15 send notification of such filing to the attorneys/of record in this case.

16
17 DATED this 14th day of November, 2007.

18
19 THE TULALIP TRIBES

20 /s/ Lael Echo-Hawk

21 Lael Echo-Hawk

22 WSBA# 34525

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